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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,720	05/14/2001	Pierre Casellas	IVD 1087	9971

27546 7590 09/27/2002

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EXAMINER

SRIVASTAVA, KAILASH C

ART UNIT PAPER NUMBER

1651

DATE MAILED: 09/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/831,720

Applicant(s)

CASELLAS ET AL.

Examiner

DR. Kailash C. Srivastava

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 16-41 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. The assigned Examiner to your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Examiner K.C. Srivastava in Art Unit 1651.
2. Claims 16-41 are pending.
3. Further review in this application shows that the restriction requirement in Office Action dated 07/25/2001 (Paper Number 4) was not made according to guidelines of 371. A new restriction requirement according to 371 guidelines is as follows.

### *Election /Restriction*

4. This application contains the following groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Restriction to one of the following inventions is required under 35 U.S.C. 121 and 372.

- Group I, consisting of claims 1-38, drawn to first product and its method of use, which is a topical composition to treat cutaneous stress and a method to treat a cutaneous stress (e.g., skin wrinkles) with topical application of said composition.
- Group II, consisting of claim 39, drawn to a second product consisting of *Nocardia* species and its productive mutants.
- Group III, consisting of claim 40, drawn to a third product consisting of *Streptomyces* species and its productive mutants.
- Group IV, consisting of claim 41, drawn to a fourth product consisting of *Actinosynnema* species and its productive mutants.

5. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature of group I product is that of a topical composition to treat cutaneous stress. The special technical feature of the inventions of groups II-IV are the particular genus, species, and strain of the microorganism recited therein, each of which is mutually exclusive from the other, and none of which share the same or similar technical

feature of Group I topical composition. Since no special technical feature exists between the products of groups I-IV, there is no unity of invention.

6. This application contains claims directed to different compositions comprised of a variety of ingredients. Therefore, if the applicant elects Group I above, the applicant must also make election of species by electing a single species from each of the following categories:

- a. a synthetic substance that binds to the peripheral benzodiazepine receptor as exemplified in Claim 18,
- b. a natural extracted substance that binds to the peripheral benzodiazepine receptor, or
- c. a substance that binds to the peripheral benzodiazepine receptor is obtained by fermentation, as exemplified in Claims 19-21.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

In accordance with 37 CFR 1.499, applicant is required that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species [MPEP § 809.02(a)].


8. Applicant is reminded that upon the cancellation of claims to a non-elected invention and species, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is

(703) 605-1196. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

  
Kailash C. Srivastava, Ph.D.  
Patent Examiner  
Art Unit 1651  
(703) 605-1196

September 23, 2002



CHRISTOPHER R. TATE  
PRIMARY EXAMINER